

*United States Attorney  
Eastern District of New York*

271 Cadman Plaza East  
Brooklyn, New York 11201

On August 4, 2017, Shkreli was convicted at trial in the Eastern District of New York of conspiracy to commit securities fraud and securities fraud. On March 5, 2018, the Court in the Criminal Case entered a Preliminary Order of Forfeiture (the “Forfeiture Order”) requiring Shkreli to forfeit \$7,360,450.00 and entered a judgment (the “Forfeiture Money Judgment”) in that amount. The Forfeiture Order further required the defendant to forfeit, pursuant to 21 U.S.C. § 853(p), his interest in various assets (the “Substitute Assets”), up to the amount of the Forfeiture Money Judgment. Among the Substitute Assets named in the

Forfeiture Order is Shkreli's interest in Phoenixus AG, a closely held company located in Switzerland.<sup>1</sup>

To date, the government has collected \$5,121,967.70 towards the Forfeiture Money Judgment, leaving an outstanding balance currently in the amount of \$2,238,482.30 (the "Outstanding Balance"). The amount collected to date does not include Shkreli's interest in Phoenixus AG, which remains available to satisfy the Outstanding Balance and which Petitioner now seeks to have turned over in the Application.

## **II. The Government's Response to the Application**

In the Application, Petitioner, pursuant to Fed. R. Civ. P. 69(a) and CPLR § 5228, seeks the turnover of, and appointment of a receiver to liquidate, Shkreli's interest in Phoenixus AG to collect a judgment in the amount of \$2,614,930.00.

Pursuant to the Forfeiture Order, Shkreli's interest in Phoenixus AG is subject to forfeiture, and the certificate for his preferred shares is in the government's custody.<sup>2</sup> While 21 U.S.C. § 853(k) bars the intervention of a third party asserting an interest in property subject to forfeiture, here the government has no objection to the Application provided that, in the event it is granted and a professional receiver is appointed, any proceeds from the liquidation of Shkreli's interest in Phoenixus AG are first applied towards the Outstanding Balance of the Forfeiture Money Judgment. The undersigned have discussed the government's position with Richard J.J. Scarola, counsel for Petitioner, who has advised that he has no objection to the payment of the Outstanding Balance first, before any proceeds are applied towards Petitioner's judgment.<sup>3</sup>

Accordingly, in the event that this Court grants Petitioner's request for a receiver and orders that Outstanding Balance of the Forfeiture Money Judgment to be paid first, the government would apply to the Court in the Criminal Case to release Shkreli's interest in Phoenixus AG, or any portion thereof as required. Finally, the government takes no position

---

<sup>1</sup> As no third-party claims to Shkreli's interest in Phoenixus AG were filed in an ancillary proceeding, as required pursuant to 21 U.S.C. § 853(n), the Forfeiture Order became final as to this asset in a Final Order of Forfeiture entered on September 10, 2018.

<sup>2</sup> Phoenixus AG was previously named Turing Pharmaceuticals AG and then Vyera Pharmaceuticals AG. In response to the Forfeiture Order, which refers to Vyera Pharmaceuticals, respondent Shkreli turned over to the government a certificate for preference shares A in Turing Pharmaceuticals.

<sup>3</sup> The government is also in discussions, and hopes to resolve, with Mr. Scarola issues relating to a non-party Information Subpoena directed to the government, a copy of which is attached as Exhibit J to the Declaration of Richard J.J. Scarola in Support of Application for Turnover and Appointment of a Receiver. (Dkt. No. 48-10).

with respect to the arguments raised by Petitioner or to those raised by Shkreli relating to whether a receivership is premature or otherwise not appropriate.

We appreciate the opportunity that this Court has provided the government to respond to the Application, and for its consideration of this letter. As a courtesy, a copy of this letter will be docketed in the Criminal Case.

Respectfully submitted,

MARK J. LESKO  
Acting United States Attorney  
Eastern District of New York

By: /s/  
 Laura D. Mantell  
 Claire S. Kedeshian  
 Assistant U.S. Attorneys  
 (718) 254-6253/6051  
 Laura.Mantell@usdoj.gov  
 Claire.Kedeshian@usdoj.gov

**cc: BY ECF**  
All Counsel of Record

*United States v. Shkreli*, 15-CR-637 (E.D.N.Y.) (KAM)